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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, ET AL.,
Appellants,

vs.

FRANCISCO MEDRANO, ET AL.,
Appellees.

**ON DIRECT APPEAL FROM THE UNITED STATES
THREE-JUDGE DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS**

JURISDICTIONAL STATEMENT

**BRIEF AMICUS CURIAE ON BEHALF OF FARAH
MANUFACTURING COMPANY, INC.,
URGING REVERSAL**

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March 1, 1973

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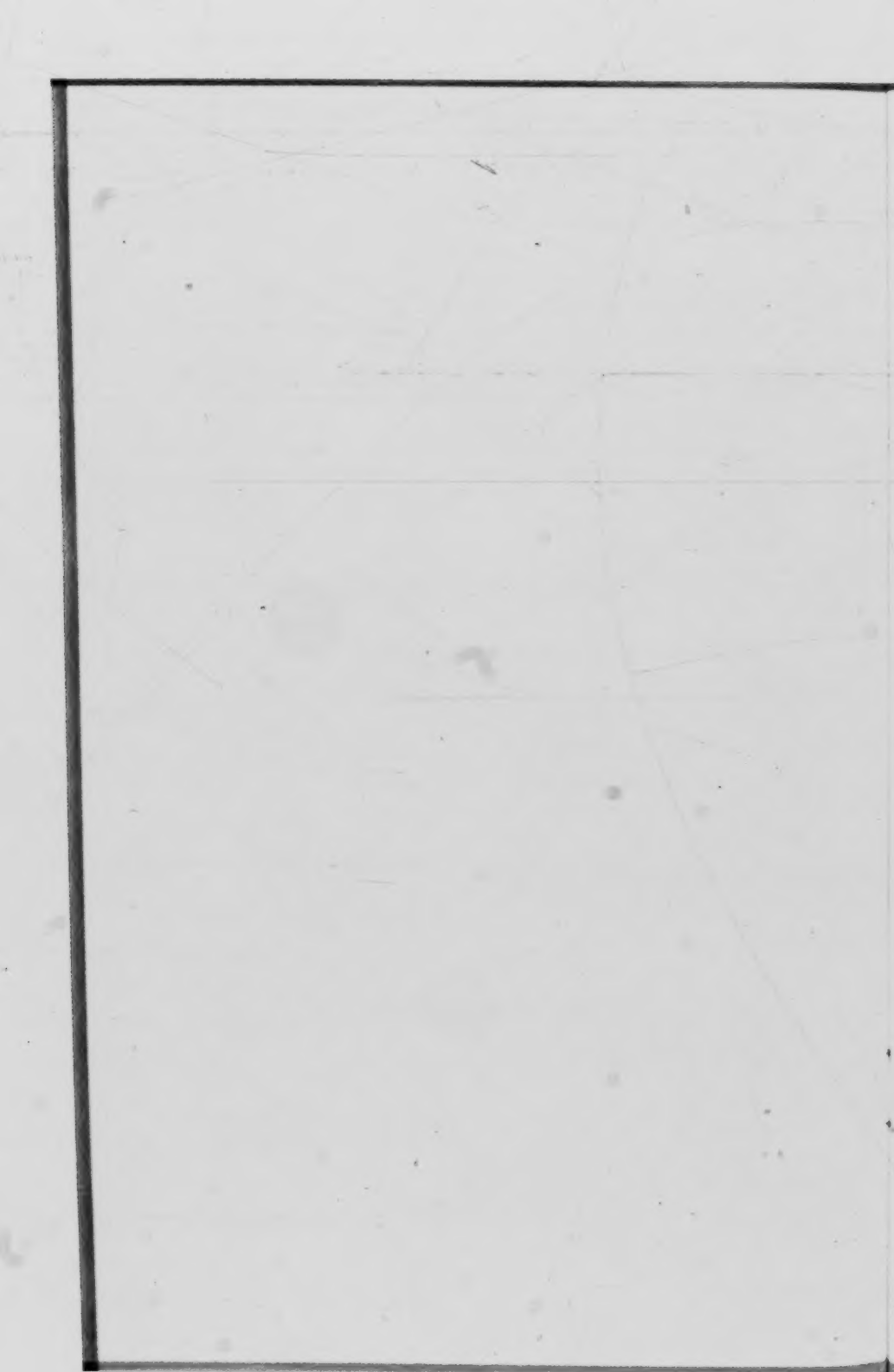
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BRIEF AMICUS CURIAE ON BEHALF OF FARAH MANUFACTURING COMPANY, INC., URGING REVERSAL

Farah Manufacturing Company, Inc. (Farah) respectfully submits its brief *amicus curiae*, having obtained consent to do so from all parties. Appendix A.

QUESTION PRESENTED

Farah limits this brief to the single question of whether the Texas mass picketing statute's number-and-distance requirement,¹ limiting pickets to two within 50 feet of an entrance or of other pickets, places an unconstitutional restraint on protected First Amendment freedoms.

1. Article 5154d, Section 1, Texas Revised Civil Statutes.

INTEREST OF AMICUS CURIAE

Farah is interested in *Medrano*, the instant case, because it has pending before this court a petition for a writ of certiorari in a case where the constitutionality of the number-and-distance requirement of the Texas mass picketing statute is also in issue. *Farah Manufacturing Company, Inc., et al. v. El Paso Joint Board, Amalgamated Clothing Workers of America, et al.*, No. 72-619. Indeed, the *Farah Manufacturing* case is linked very closely to *Medrano*, which was decided below while *Farah Manufacturing* was pending consideration on appeal before the Fifth Circuit. After the *Medrano* decision was rendered, Farah moved the Fifth Circuit to hold in abeyance its decision pending *Medrano's* appeal to this Court, which appeal Farah was assured would be forthcoming. Appendix B. However, the Fifth Circuit denied the motion, cited this case with approval, and ruled against Farah. Subsequently, Farah perfected its petition for writ of certiorari.

As in the instant case, the issue of the constitutionality of the mass picketing statute is clearly presented by *Farah Manufacturing*, where hundreds of pickets massed at entrances to Farah plants, in open violation of the statute's number-and-distance requirement. Further, since the labor dispute which resulted in the *Farah Manufacturing* litigation still exists, the importance to all litigating parties of a final decision on the constitutionality of the Texas mass picketing statute cannot be underestimated.

ARGUMENT

In *Medrano*, the court below found the Texas mass picketing statute, Article 5154d, Texas Revised Civil Statutes, defective for the same reasons advanced in *Davis v. Francois*, 395 F.2d 730 (5th Cir. 1968). In *Davis*, the Fifth Circuit examined a city ordinance limiting the right to picket in the following terms:

It shall be unlawful for more than two (2) people to picket on private property or on the streets and sidewalks of the City of Port Allen in front of a residence, a place of business, or public building. Said two (2) pickets must stay five (5) feet apart at all times and not obstruct the entrance of any residence, place of business, or public building by individuals or by automobiles.

395 F.2d at 732. The Fifth Circuit recognized that First Amendment protection extended, not only to pure speech, but also to peaceful expressions of views by marches, demonstrations or assemblies. 395 F.2d at 733. It also recognized that certain governmental interests could be invoked to regulate such expressions to prevent riots, disorder, interference with traffic, blockage of sidewalks or entrances to buildings, and disruption of normal functions of public facilities. 395 F.2d at 733. Cf. *Allen-Bradley Local 1111, United Elec. Workers v. Wisconsin Employment Relations Bd.*, 315 U.S. 740 (1942).

After examining these competing considerations, the Fifth Circuit found the city ordinance void for overbreadth and made the following observation:

Its application is sweeping: It restricts "public issue picketing" and private picketing; it restricts picketing on both the sidewalks and the streets; it extends

to all kinds of facilities in the city though each may present different considerations; it absolutely limits the number of picketers to two regardless of the time, place or circumstances. In doing so it "unduly restricts the right to protest" because it does not aim specifically at a serious encroachment on a state interest or evince any attempt to balance the individual's right to effective communication and the state's interest in peace and harmony.

395 F.2d at 735. The court was especially concerned with the absolute restriction on the number of pickets, which was thought to be especially restrictive when coupled with the fact that the ordinance covers all kinds of buildings. 395 F.2d at 735.

A factual comparison of the Texas mass picketing statute with the ordinance in the *Davis* case indicates that the Texas statute has been drafted in proper observance of constitutional mandates. Unlike the ordinance, the statute does not absolutely limit the number of pickets to two regardless of the time, place or circumstance.² Instead, it merely provides that pickets must be spaced at a reasonable distance from entrances and from one another so as to permit the state to protect its legitimate interests, such as the prevention of disorder, interference with traffic, blockage of sidewalks or entrances to buildings, and disruption of normal public functions.³ In addition to

2. For example, the undisputed record in *Farah Manufacturing* reveals that, properly spaced, more than 100 individuals could picket one of Farah's plants without contravening the statute.

3. In *Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308, 322 (1968), this court disapproved of state action which removed picketing to 350 feet from the situs, because the distance was so great as to render communication by placards "virtually indecipherable." In contrast, the Texas statute permits two pickets directly at an entrance, thus encouraging effective communication by any means, placards, voice, or handbills.

the fact that the statute is not unduly restrictive, it is likewise not susceptible of discriminatory enforcement.⁴ Rather, it properly provides both those seeking to publicize their labor dispute and the officials charged with the duty to regulate the place and manner of use of the streets and sidewalks with a clear and reasonable standard which, unlike the ordinance in *Davis*, properly balances their respective legitimate interests. *Cox v. Louisiana*, 379 U.S. 536 (1965); *Cox v. New Hampshire*, 312 U.S. 569 (1941).

Moreover, as an exercise of police power, the Texas statute is within the constitutional authority of the state; as an attempt to prevent interference with traffic and blockage of sidewalks or entrances, it furthers an important state interest; as a regulation of conduct, it is unrelated to the suppression of free expression; and, as an effort to further legitimate goals, it is an incidental restriction on alleged First Amendment freedoms, which restriction is no greater than is essential to the furtherance of such an interest. *United States v. O'Brien*, 391 U.S. 367 (1968).

In the instant case, the court below disregarded these clear manifestations of validity and observed that little "imagination is required to envisage circumstances where groups of demonstrators, substantially larger than two persons, standing at closer quarters than fifty feet would not threaten the safe flow of traffic nor unreasonably interfere with free ingress or egress from nearby buildings." *Medrano v. Allee*, 347 F.Supp. 605, 625 (S.D. Tex.

4. Picketing which complies with the readily-ascertainable standard established by the Texas Legislature is thus protected from interference from law enforcement officials who, in the absence of an established definition as to what constitutes "mass picketing," might well impose a more restrictive standard upon attempted picketing.

1972). However, whether there are circumstances under which more than two persons might not threaten traffic nor interfere with ingress and egress is a question appropriately left to legislative discretion. The proper issue, to which the court below failed to address itself, is whether the regulation adopted by Texas unduly and unnecessarily restricts the ability of a union to communicate its views to the public. *Schneider v. State*, 308 U.S. 147, 161 (1939). Consequently, since a thorough analysis of the competing interests balanced by the Texas Legislature in the mass picketing statute was not attempted by the court below, its decision was incorrect.

CONCLUSION

The court below has departed from standard principles in declaring unconstitutional the number-and-distance requirement of the Texas mass picketing statute. Consequently, this Court should give the case full review.

Respectfully submitted,

WILLIAM DUNCAN

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TOMMY B. DUKE

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March 1, 1973

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 1973, three copies of the Brief *Amicus Curiae* were mailed, postage prepaid, to the following:

CHRIS DIXIE
609 Fannin Street Building
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Fannin Street at Texas Avenue
Houston, Texas 77002

THE HONORABLE JOHN L. HILL
Attorney General of Texas
Austin, Texas 78711
(Attention: Gilbert J. Pena)

FRANK R. NYE, JR.
Rio Grande City, Texas 78582

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El Paso, Texas 79901

APPENDIX

APPENDIX A

**ATLAS, HALL, SCHWARZ, MILLS, GURWITZ
& BLAND**

Attorneys At Law

Professional Arts Building 818-820 Pecan

P.O. Drawer 1870 (512) 682-5501

McAllen, Texas 78501

December 26, 1972

Mr. Royal Furgeson
Kemp, Smith, White,
Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: Civil Action No. 67-B-36
Medrano, et al v A. Y. Allee, et al

Dear Mr. Furgeson:

On behalf of the Defendant Jim Rochester, whom we represent in the above cause, we consent to your filing an amicus curiae brief in this case. Please let me know if you need anything additional in order to confirm or document this consent.

Very truly yours,

Atlas, Hall, Schwarz, Mills,
Gurwitz & Bland

By /s/ Gary Gurwitz

GG/ag

A2

LUTHER E. JONES, JR.

Lawyer

338 Laurel Drive

Corpus Christi, Texas 78404

Phone: 882-5388

January 12, 1973

Mr. Royal Furgeson
2000 State National Plaza
El Paso, Texas, 79901

Dear Sir:

This is to advise, in reply to your letters of Dec. 21, 1972 and January 5, 1973, that I personally have no objection to your filing the brief you mention. As you know, I was one of the lawyers for the county officials involved. I have not been in touch with them for months. I assume, but do not know, that they have no objection to your filing the brief. You have my permission to contact them directly if you wish, or, better still, it might be a good idea for you to contact Randall Nye in Rio Grande City. He also is of counsel for them and could tell you quickly what their wishes are.

Sincerely,

/s/ Luther E. Jones, Jr.

A3

FRANK R. NYE, JR.
Attorney and Counselor
Rio Grande City, Texas 78582

February 20, 1973

Mr. Royal Ferguson
Kemp, Smith, White, Duncan & Hammond
200 State National Plaza
El Paso, Texas 79901

Re: Cause No. 67-B-36
Medrano vs Allee, et al.

Dear Mr. Ferguson:

As one of the attorneys for Defendants, Dr. R.A. Solis, Paul Pena, Roberto Pena, and B.S. Lopez, we have no objection to your filing our amici curiae brief on behalf of Farah Manufacturing Company, in the above styled and numbered case before the U.S. Supreme Court.

Yours very truly,

/s/ Frank R. Nye, Jr.

FRNJ/bi

A4

THE ATTORNEY GENERAL OF TEXAS
Austin, Texas 78711

January 8, 1973

Honorable Royal Furgeson
Kemp, Smith, White, Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: Civil Action No. 67-B-36
Medrano v. Allee, U.S.D.A.,
S.D. Texas, Brownsville Div.

Dear Mr. Furgeson:

This is to confirm my telephone conversation of December 28, 1972, with your office where I advised your office that I was authorized to state to you that this office has granted consent to Farah Manufacturing Company, Inc. to file a brief, as amicus curiae, in the *Medrano* decision.

As soon as a copy of the jurisdictional statement is printed I will send you a copy.

Yours very truly,

/s/ Gilbert J. Pena
Assistant Attorney General

GJP:pa

A5

DIXIE, WOLF & HALL
Attorneys and Counselors
609 Fannin St. Bldg.—Suite 401
Fannin St. at Texas Avenue
Houston, Texas 77002

February 19, 1973

Mr. Royal Furgeson
Kemp, Smith, White, Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Dear Mr. Furgeson:

On behalf of my clients in the case of *Medrano v. Allee*, 347 F. Supp. 605 (S.D. Tex. 1972), I consent to your filing an amicus curiae brief in said cause now before the United States Supreme Court for Farah Manufacturing Company, Inc. My consent is given in light of your representation that such a brief will be limited to a discussion of the constitutionality of Section 1, Paragraph 1 of Article 5154d, Texas Revised Civil Statutes, which relates to the spacing of pickets at certain distances.

Very truly yours,

/s/ Chris Dixie

CD/ma

APPENDIX B

THE ATTORNEY GENERAL OF TEXAS

Austin, Texas 78711

July 31, 1972

AIR MAIL SPECIAL DELIVERY

Hon. Royal Furgeson
Kemp, Smith, White, Duncan
and Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: C.A. 67-B-36—Francisco
Medrano, et al v. A. Y. Allee,
et al—USDC, SD Tex.,
Brownsville Division

Dear Mr. Furgeson:

In response to your telephone inquiry regarding the attitude of this office with reference to appealing the above captioned cause, I am authorized to state to you categorically that this office is now in the process of taking affirmative action to appeal this case immediately. As soon as final judgment is entered, we will make application for a Stay Order and immediately perfect our appeal.

Yours very truly,

/s/ Nola White
First Assistant

NW:bm